

**Bail Slip**

The Appellant / Accused was directed to be released on Bail made in CrI.MP(MD)No.2/2010 in CrI.Appeal (MD)No.375/2010 dated 21.10.2010 on the file of the Madurai Bench of Madras High Court.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED : 05.08.2019****CORAM :****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****CrI A(MD)No.375 of 2010**

Duraipandi @ Vembhaiyan

... Appellant / Accused No.2

Vs.

State, rep.by the Inspector of Police,
Ammapettai Police Station,
Thanjavur District.
(Cr.No.7 of 2005)

... Respondent / Complainant

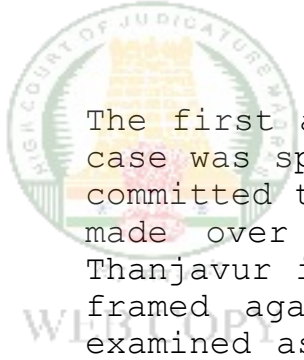
Prayer : This Criminal Appeal is filed under Section 374 (2) of Criminal Procedure Code, to call for the records of the learned Additional District and Sessions Judge (Fast Track Court-I), Thanjavur in S.C No.114 of 2010 and to set aside the conviction and sentence of imprisonment passed by the learned Additional District and Sessions Judge (Fast Track Court-I), Thanjavur in S.C No.114 of 2010 by judgment dated 29.07.2010 and acquit the appellant

For Appellant : Mrs.M.Kamalini
Legal Aid Counsel
For Respondent : Mrs.S.Bharathi,
Government Advocate (crl.side)

JUDGMENT

The appellant was convicted for the offences under Sections 414 and 201 IPC and sentenced to one year rigorous imprisonment and five years rigorous imprisonment respectively vide judgment dated 29.07.2010 in S.C No.114 of 2010 on the file of the Additional District and Sessions Judge, Fast Track Court-I, Thanjavur.

2.The prosecution case is that on 13.01.2005 between 06.00 to 06.30 P.M, one Gomathi was raped and murdered in the garden belonging to one Ayyavu/PW.17 in Kaliyammal Kovil South Street in Karuppamuthaliyar Kottai Panchayat, Rajapuram and the jewellery worn by her removed from her body. In this regard, PW.1 the father of the deceased lodged Ex.P1 complaint before the Ammapettai Police Station. Ex.P14 F.I.R in Crime No.7 of 2005 was registered for the offences under Sections 302, 379 IPC. Investigation was undertaken and final report came to be filed against Al Thiyagu @ Thiyagarajan and the appellant herein before the Judicial Magistrate, Papanasam.



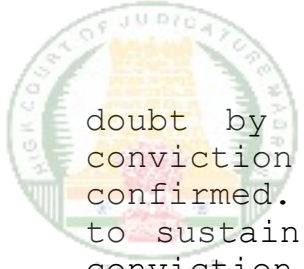
The first accused Thiyaagu @ Thiagarajan absconded. Therefore, the case was split against him and the appellant was charged with having committed the offences under Sections 414 and 201 IPC. The case was made over to the Additional District and Sessions Judge/FTC-I, Thanjavur in S.C No.114 of 2010. The appellant denied the charges framed against him and claimed to be tried. The prosecution examined as many as 27 witnesses and marked Exs.P1 to P20. M.O.1 to M.O.14 were also marked. The court below by the impugned judgment convicted and sentenced the appellant as mentioned above. Challenging the same, this appeal has been filed.

3.When the appeal was listed for hearing, there was no representation on the side of the appellant. Therefore, the Registry was directed to appoint a legal aid counsel. Today, when the matter was taken up for hearing, the legal aid counsel for the appellant submitted that the impugned judgment will have to be reversed. She also reiterated the contentions set out in the appeal memorandum. Per contra, the learned Government Advocate (crl.side) submitted that the impugned judgment does not warrant any interference and wanted this Court to dismiss this appeal.

4.I carefully considered the rival contentions and perused the evidence on record. Even though this case involves rape and murder, it is relevant to note that the appellant was not charged with rape or murder. He was charged only for the offences under Sections 201 and 414 of IPC. Therefore, the evidence of the witnesses insofar as it associates the appellant with the absconding accused A1 are not of much consequence.

5.This court wanted to know the incriminating circumstances put to the accused from the evidence of the prosecution witnesses. The learned Government Advocate (crl.side) would point out that the absconding accused gave a confession before the police and the admissible portion of such confession was marked as Ex.P3. Pursuant to the confession made by A1, the jewellery worn by the deceased were recovered from the appellant herein under Ex.P5. In fact, from a reading of the Ex.P5, one comes to know that it was the appellant who handed over the jewellery belonging to the deceased to the police. Ex.P5 was marked through the Village Administrative Officer namely PW.7. PW.1 the father of the deceased identified the stolen jewellery. This Court perused the explanation given by the appellant in the examination under Section 313 of Cr.PC. The appellant had merely characterised the incriminating circumstances put to him as false. He did not come out with any explanation or defence whatsoever.

6.When the material objects which were identified as the jewellery belonging to the deceased by the father of the deceased, were recovered from the house of the appellant and when the appellant has not come out with any explanation whatsoever, this Court has to necessarily come to the conclusion that the charge under Section 414 of IPC has been established beyond reasonable



doubt by the prosecution. In this view of the matter, the conviction imposed by the court below for the said offence is confirmed. However, there is absolutely no evidence whatsoever to sustain the charge under Section 201 of IPC. Therefore, the conviction and fine and sentence imposed on the appellant for the offence under Section 201 IPC is set aside.

7.The learned legal aid counsel would submit that the appellant had spent about six months in prison. She also would point out that the appellant has been scrupulously complying with the condition imposed on him. Taking note of these aspects, even while sustaining the conviction under Section 414 of IPC, the sentence of imprisonment imposed on him is modified and reduced to the period already undergone by him. The bail bond executed by the appellant shall stand cancelled.

8.With this modification in the matter of sentence and conviction, the appeal is partly allowed.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar(CS)

Skm

To

- 1.The Principal District & Sessions Judge,
Thanjavur.
- 2.The District Munsif Cum Judicial Magistrate,
Papanasam.
- 3.The Additional District and Sessions Judge
(Fast Track Court-I), Thanjavur.
- 4.The Inspector of Police, Ammapettai Police Station,
Thanjavur District.
- 5.The Superintendent, Central Prison, Trichy
- 6.The Section Officer, Criminal Section
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1 CC to M/s.M.KAMALINI, Advocate (SR-80081[F] dated 06/08/2019)

Cr1 A(MD)No.375 of 2010
05.08.2019

SMA/17/12/19/3P/9C